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Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

AT SPOKANE

STEPHEN R. POWELL, Plaintiff, v. COLLECTO, INC., Defendant.	Case No. CV-12-477-LRS (Spokane County Superior Court Case No. 12-2-02606-2) **NOTICE OF REMOVAL**

Defendant Collecto, Inc. ("Collecto"), by and through counsel, states as follows:

Removal of State Court Action: Defendant hereby exercises its right under 28 U.S.C. §§ 1441 *et seq.* to remove this action from the Superior Court for the State of Washington in Spokane County, styled *Stephen R. Powell v. Collecto, Inc.*, Cause No. 12-2-02606-2 (the "state court action").

State Court Action: (Due to the complexities involved, the relevant facts are attested to and explained in the Declaration of Melissa O'Loughlin White, filed herewith.) Plaintiff served on Defendant Collecto, Inc. an un-filed state court Summons and Complaint captioned *Stephen R. Powell v. Collecto, Inc.*, Spokane County (no cause number) dated April 11, 2012. Counsel for Defendant conferred with counsel for Plaintiff, but were unable to resolve the parties' differences. As Plaintiff had not yet filed the lawsuit, removal of the complaint to federal court was not possible. *See* 28 USC 1446 (explaining that when removal of served complaint is not possible, the deadline for removal is 30 days after defendant receives papers indicating the case is removable).

On June 20, 2012, Defendant demanded that Plaintiff file the complaint in court and provide the papers to Defendant's counsel, including the Spokane County Superior Court case number so that the removal process could be commenced. *See* CR 4 (explaining that the defendant may demand that the plaintiff file this lawsuit with the court and if so, then 14 days after the demand is served, the plaintiff must file this lawsuit with the court, or the service of the unfiled summons and complaint will be rendered void). That same day, Defendant provided Plaintiff with a Notice of Appearance. As no lawsuit had been commenced, Defendant was unable to file that pleading in court.

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Plaintiff filed the Summons and Complaint and Defendant's Notice of Appearance with the clerk of the Spokane County Superior Court on July 5, 2012. Although Spokane County Local Rules require that Plaintiff serve on Defendant the Case Assignment Notice and Order along with the initial pleadings (LAR 0.4.1(b)) within ten days of the filing, Plaintiff never did so. Plaintiff failed to notify Defendant that the lawsuit had been filed, or provide to Defendant any other paper indicating the case had become removable.

On July 10, 2012, Defendant searched public court records and learned for the first time that Plaintiff had filed the complaint. Defendant also learned for the first time the Spokane County Superior Court case number, the identity of the assigned judge, and the date and time of an upcoming case status conference.

As the 30-day time period for removal does not begin to run until the basis for removal is revealed affirmatively to the defendant, this Notice of Removal is timely. *See* 28 USC 1446; *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 695 (9th Cir. 2005).

Record in State Court: The following pleadings, as are available in the file of the state court action, encompass all of the pleadings received by July 24, 2012, or filed in this action as reflected on the Court's docket as of July 24, 2012:

- Summons
- Complaint
- Declaration of Service
- Notice of Appearance

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- Notice of Assignment

Attached hereto collectively as Exhibit A are true and correct copies of all pleadings that Defendant obtained either from the Spokane County Superior Court, or from Plaintiff's counsel.

Nature and Description of Case: This is a civil action in which Plaintiff seeks damages and declaratory relief for alleged violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq*. Plaintiff also alleges that the same underlying conduct simultaneously violated Washington state statues.

Basis for Federal Court Jurisdiction – Federal Question: This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1331, and 28 U.S.C. §1367, and is one which may be removed to this court by Defendant pursuant to 28 U.S.C. §1441(a). This dispute arises under the laws of the United States, specifically the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692. This Court has supplemental jurisdiction over all other claims asserted (Washington Consumer Protection Act, RCW 19.86, and the Washington Collection Agency Act, RCW 19.16) because they are so related to FDCPA claims in the action within such original jurisdiction that they form part of the same case or controversy.

Concurrent Notice to State Court: Defendant is concurrently filing a copy of this Notice of Removal with the Court of the Clerk of the Superior Court of Washington in and for Spokane County, pursuant to 28 U.S.C. § 1446(d).

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WHEREFORE, Defendant asks that this action be removed from the Superior Court of Washington for Spokane County to the United States District Court for the Eastern District of Washington at Spokane.

DATED this 24th day of July, 2012.

Respectfully submitted,

COZEN O'CONNOR

By: */s/ Melissa O'Loughlin White*

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Attorneys for Defendant

CERTIFICATE OF SERVICE

On the 24th day of July, 2012, the undersigned caused to be served a true and correct copy of the foregoing Notice of Removal upon the following party in the manner indicated below:

Attorney for Plaintiff:

Timothy W. Durkop Durkop Law Office 2906 N. Argonne Road Spokane Valley, WA 99212-2235 Phone: (509) 928-3848 Facsimile: (509) 279-0879 Email: tim@durkoplaw.com mail@durkoplaw.com	[ ] Via Hand Delivery [ ] Via U.S. Mail [ ] Via Facsimile [X] Via Overnight Courier [ ] Via E-mail

DATED this 24th day of July, 2012.

By: *_____/s/ Dava Bowzer_____*
Dava Bowzer, Legal Assistant to
Melissa O'Loughlin White, WSBA #27668